

REMARKS

In the Non-Final Office Action mailed 29 July 2009, Claims 1-27 were rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 1-27 were rejected under 35 U.S.C. § 102(b) as being clearly anticipated by U.S. Patent No. 6,013,293 (“De Moor”). Claims 1-27 were also rejected under 35 U.S.C. § 102(b) as being clearly anticipated by European Pat. App. Pub. No. 0 611 037 A1 (“Trouilhet”). Claims 1-27 were also rejected on the ground of non-statutory obviousness-type double patenting over claims of U.S. Patent No. 7,523,718 (“Torrington”).

Claims 1-27 are pending, including independent claims 1 and 25. Claims 1-27 have been amended. Support for the amendments is found at least at paragraphs [0035], [0038]-[0040], [0052], [0068], [0083], and [0085] and Figures 1-3 of Applicants’ published application. No new matter has been added. Reconsideration of the rejected claims is respectfully requested in light of the amendments and the following remarks.

Claim Rejections - 35 U.S.C. § 112 Rejections

Claims 1-27 stand rejected under 35 U.S.C. § 112. The claims have been amended where appropriate to further recite clarification which overcomes any lack of antecedent basis and/or indefiniteness. Accordingly, Applicants respectfully request withdrawal of these rejections under 35 U.S.C. § 112.

Claim Rejections - 35 U.S.C. § 102 Rejections under De Moor

Independent **claims 1 and 25** recite, *inter alia*, said membrane defining a first region and a second region, said first region forming a storage compartment for holding cargo and said second region defining a gas buffer region, said opening being in communication with said gas buffer region.

De Moor does not teach or suggest a membrane defining a first region and a second region, the first region holding cargo and the second region defining a gas buffer region, said at least one inlet, outlet, or inlet and outlet being in communication with said gas buffer region, as recited. Rather, De Moor discloses a gas-permeable membrane (ref. no. 121) with a “packaging atmosphere” on one side (See Cols. 2:65-67; 3:29-31;

11:20-23; and Figures 1-2), i.e. the atmosphere within the container (Col. 1:21-22). The other side of the gas-permeable membrane is exposed to the air surrounding the package (Col. 3:20-23; 3:49-52; 7:7-8). Nowhere does De Moor disclose or suggest a “gas buffer region” as recited.

In contrast, the present application discloses a separate gas buffer region or “compartment” (para. [0056]; see also ref. no. 8). In one embodiment, the gas buffer region can be made as an independent or replaceable unit located on the interior or exterior of a container (para. [0058]; see also FIGS. 2, 3). Accordingly, this rejection is unsupported by De Moor and should be withdrawn.

Independent **claim 25** as amended recites, *inter alia*, said opening being in communication with said gas buffer region and comprising a valve that controls gas flow through said opening.

De Moor does not teach or suggest said opening being in communication with said gas buffer region and comprising a valve that controls gas flow through said opening. Rather, De Moor discloses an aperture produced by “cutting” a circular shape into a cover member (Col. 8:10-14) and exposing a gas-permeable membrane directly to the air surrounding the package (Col. 3:20-23; 3:49-52; 7:7-8). Nowhere does De Moor disclose a valve that controls gas flow through said opening.

In contrast, FIGS. 1-3 of the present application show a preferred embodiment with a valve 12 adapting a bidirectional flow means 11, which serves as an inlet and outlet (para. [0083]). The valve facilitates the flow of air into and/or out of the gas buffer region 8 (see also paras. [0065], [0066], [0087]). Because De Moor does not disclose said opening being in communication with said gas buffer region and comprising a valve that controls gas flow through said opening, withdrawal of the rejection and early allowance of the claims are respectfully requested.

Claim Rejections - 35 U.S.C. § 102 Rejections under Trouilhet

Applicants respectfully disagree that the claims are clearly anticipated by Trouilhet. Instead, the Office Action fails to “clearly articulate” how Trouilhet discloses the invention as claimed. MPEP 706.

Trouilhet fails to teach all the limitations of any claim. For example, Trouilhet does not teach or suggest a gas buffer region or any type of inlet or outlet, as claimed. Neither does Trouilhet teach or suggest a sensor or a controller for facilitating the passage of different molecules at different rates, as claimed. Furthermore, Trouilhet does not even disclose a container having an interior region in which gases are contained and controlled therewithin.

Instead, Trouilhet is directed to a layered product having a barrier layer 10 sandwiched between a release layer 11 and a porous substrate 9, and is also directed to a process for making such a layered product. The layered product demonstrates moisture vapor permeability, while acting as barriers to liquids and microorganisms such as viruses and bacteria (Col. 1:3-6), and has end-uses including as wound coverings, protective clothing, diapers, personal hygiene products, food packaging and roofing underliners (Col. 1:6-11). Accordingly, Trouilhet fails to teach all the limitations of any claim. Applicants respectfully request withdrawal of this rejection and early allowance of the claims.

Double Patenting Rejection

Claims 1-27 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of Tarring.

Claims directed to an apparatus for controlling the composition of gases within a container, as presented in the present application, are not obvious over claims to a system for transporting live aquatic animals between shipping points, as presented by Tarring. Any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent.

MPEP 804.II.B.1. The Office Action has not addressed these points, and therefore has not made out a *prima facie* case of obviousness-type double patenting.

CONCLUSION

Assignee respectfully submits that all of the pending claims are in condition for allowance and seeks early allowance thereof. If for any reason, the Examiner is unable to allow the application but believes that an interview would be helpful to resolve any issues, he is respectfully requested to call the Attorney for Assignee listed below.

Dated: January 19, 2010

Respectfully submitted,

/Christopher T. Sukhaphadhana/
Christopher T. Sukhaphadhana
Registration No. 56,255
Attorney for Applicants

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200